



# UNITED STATES PATENT AND TRADEMARK OFFICE

7L  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,433	08/01/2001	Daniel P. Drogichen	5181-92400	6379
23516	7590	06/12/2007	EXAMINER	
CONLEY ROSE & TAYON, PC 700 LAVACA, SUITE 800 AUSTIN, TX 78701			ART UNIT	PAPER NUMBER

DATE MAILED: 06/12/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/920,433

Applicant(s)

DROGICHEN ET AL.

Examiner

Daniel Pan

Art Unit

2183

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 29 January 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

Continuation of 10. Other (including any explanation in support of the above items): The summary of invention does not include a concise explanation of each of the independent claims. In page 6 of the amendment on 01/29/07, it includes copy of independent claim 1 with references to page and line numbers in the specification. However, no concise explanation can be found regarding independent claim 1. Summary of Invention requires somewhat more detail than simply summarizing the invention; it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application (see MPEP 2105.02, 1200-14). Since no concise explanation can be found, the requirement for a concise explanation of the subject matter defined in each independent claim referring to the specification by page and line number has not been met. Similarly, claims 10, 16, 20, 26, 34, 37, 40, 50, 57, 63 failed to provide a concise explanation each referring the specification by page and line number. In addition, claims 21, 23-25 argued separately (see appellant's page 31), but it failed to identify the function and failed to set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the page and line number. The proposed concise explanation of the subject matter defined in each independent claim is different from a concise explanation of a reference. It is the applicant who is responsible for drafting claims and choosing the language and terms used to define the claimed invention. 35 U.S.C. 112(2) ("The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.").

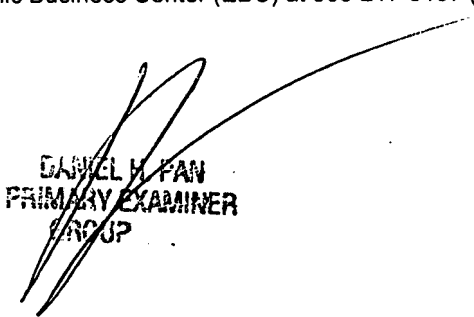
As the originator of the claim language, applicant should know what is intended by the various words and phrases used to define the claimed subject matter and thus, providing a concise explanation of the subject matter of each independent claim as proposed should not be an undue burden. This is in contrast to explaining the possible relevance of a document that may not have originated from applicant. Another difference is that the number of independent claims presented for review in an appeal is a matter directly within appellant's control, while appellant does not have control over the number of documents that should be cited to the Office.

Applicant is reminded that the subject matter of each independent claim needs to be concisely explained for a number of reasons. For example, if the Board decides that a rejection is to be reversed for a given independent claim, the remaining independent claims must be reviewed to determine if the reasons for reversing the rejection of the first independent claim apply to the remaining independent claims. Furthermore, if appellant chooses to argue a group of claims which includes more than one independent claim, the Board will need to review, at the least, each independent claim to determine which claim will be selected as representative of the group. Apart from reviewing the examiner's adverse decision on patentability, the Board may also make new grounds of rejection pursuant to former § 1.196(b) (2003) or make an explicit statement that a claim would be allowable if amended under former § 1.196(c) (2003). The concise explanation of the subject matter of each independent claim will aid the Board in making these determinations. Claim 28 has been acknowledged not on appeal (see Federal Register Vol. 69, No. 155, 2004).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Pan whose telephone number is 571 272 4172. The examiner can normally be reached on M-F from 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chan, can be reached on 571 272 4162. The fax phone number for the organization where this application or proceeding is assigned is 703 306 5404.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).  
21 Century Strategic Plan

  
DANIEL H. FAN  
PRIMARY EXAMINER  
GROUP